



## **Texas General Land Office Oil Spill Prevention and Response Program**

### **Administrative Penalty Policy for Violations**

The goal of the Texas General Land Office is to protect and preserve Texas coastal waters, while partnering with the oil production and transportation industries to promote strong local and regional economies. To that end, the Oil Spill Prevention and Response (OSPR) Division implements programs to protect the health of the Texas coast. The basic philosophy of the Land Office is that all oil spills are preventable and repeat oil spills are an indication of process or procedural failure on the part of the repeat offender. This Administrative Penalty Policy for Violations of the Oil Spill Prevention and Response Act of 1991 was developed to further that philosophy and will be reviewed annually to determine its effectiveness in reducing the number of oil spills and repeat offenders. Written comments regarding the policy should be sent to:

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Deputy Commissioner  
Texas General Land Office  
Oil Spill Prevention and Response Program  
1700 North Congress Avenue  
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The penalty provisions detailed in the *Unauthorized Discharge Matrix* are focused on repeat violations of the Oil Spill Prevention and Response Act of 1991 (OSPRA) by the same operation or organization within the 12-month period preceding a spill event. These violations represent the nucleus around which the Oil Spill Prevention and Response Program was developed. The matrix motivates the regulated community to decrease repeat spills through a graduated penalty assessment that is reduced when an effective and recognized Sound Management Practices Program is in place. Organizations that have no oil spills over a 12-month period are assessed the smallest penalties when they are the responsible parties for an accidental unauthorized discharge.

A Sound Management Practice Program includes the following items:

- a. A written statement committing to an SMP program dated prior to a spill and submitted by the owner/operator to the Land Office.
- b. Written policies and procedures to be used by company personnel in the handling of oil in a location where a spill could threaten Texas coastal waters, a description of the methods or processes to ensure that personnel adhere to the policies and procedures, and the mechanism to conduct quality assurance of initial and refresher training.
- c. Written documentation of Spill Prevention and Response Training identified in (b) above including the subjects presented, the dates of training, and a list of attendees.

- d. Post spill auditing process.

The *Unauthorized Discharge Matrix* considers the following factors in assessing administrative penalties:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused.
2. The degree of cooperation and quality of response.
3. The degree of culpability and history of previous violations of the responsible party.
4. The amount necessary to deter future violations.
5. Any other matter that justice requires including the existence of a Sound Management Practice, Responsible Carrier, or other like programs.
6. The degree to which the responsible party has implemented prevention practices or corrective actions as a result of previous spill incidents.

The *Prevention and Response Penalty Matrices* provide guidance for assessing penalties for specific violations of the OSPRA not directly attributable to unauthorized discharge or failure to notify violations. Most of the violations listed in these matrices, though generally associated with a spill event, are distinctly identified in the OSPRA or the implementing regulation and are considered as either prevention or response actions. Penalties for violations identified in this matrix may be increased for multiple violations within the preceding 12-month period depending on the circumstances.

### **Penalty Matrix Statement**

The Land Office will use these matrices for guidance in assessing penalties with the intention to assess penalties at the minimum levels. Aggravating circumstances, however, may cause the penalty assessed to be higher.

The following are examples of circumstances where penalty assessments may be increased from the baseline. This list represents some common considerations and is not meant to be inclusive of all possible circumstances.

1. The responsible party fails to respond to a spill with the appropriate resources within a reasonable time frame.
2. The responsible party fails to modify identified deficient procedures that contribute to subsequent spills.
3. The responsible party fails to fulfill the duties of the responsible person in accordance with the OSPRA.
4. The responsible party is the subject of repeat unauthorized discharges of a similar nature or oil handling, storage or transfer process failure.

## Unauthorized Discharge Matrix

The following matrix applies to all unauthorized discharges of oil that has entered Texas coastal waters. The time period for determining the number of spills appropriate to this matrix is the 12-month period immediately preceding the spill in question. For example, an unauthorized discharge that occurred on January 31<sup>st</sup> will require the inclusion of the responsible party's history of unauthorized discharges since February 1<sup>st</sup> of the previous year to determine the appropriate penalty box to enter.

Repeat unauthorized discharge violations may subject the responsible party to a comprehensive review of spill history and pollution prevention processes including, if appropriate, a review of the responsible party's Sound Management Practices Program.

When discharges are small, the Land Office may elect to issue an "on the spot" ticket if no other aggravating factors require an increase in an assessed penalty amount.

Unauthorized discharges greater than one gallon that enter coastal waters require a per barrel penalty equal to the number of whole barrels (42 U.S. gallons) multiplied by the amount indicated in the appropriate penalty box. For example, if an unauthorized discharge of 5.5 barrels was the third spill during the preceding 12-month period, and it occurred at a location where a Sound Management Practices Program was in place, the responsible party would be assessed a \$900 penalty.

EX: \$400 (base penalty) plus 5 bbls (5.5 rounded to the lowest whole barrel) multiplied by \$100 equals \$900.

### Sound Management Practice (SMP) in place

	1 <sup>st</sup> Spill	2 <sup>nd</sup> Spill	3 <sup>rd</sup> Spill	4 <sup>th</sup> Spill	5 <sup>th</sup> Spill**
<= 1 gal	\$250	\$250	\$250	\$250	\$250
> 1 gal	\$300 plus \$100 per bbl	\$350 plus \$100 per bbl	\$400 plus \$100 per bbl	\$450 plus \$100 per bbl	\$500 plus \$100 per bbl

### Sound Management Practice (SMP) not in place

	1 <sup>st</sup> Spill	2 <sup>nd</sup> Spill	3 <sup>rd</sup> Spill	4 <sup>th</sup> Spill	5 <sup>th</sup> Spill**
<= 1 gal	\$250	\$250	\$250	\$250	\$250
> 1 gal	\$350 plus \$200 per bbl	\$400 plus \$200 per bbl	\$450 plus \$200 per bbl	\$500 plus \$200 per bbl	\$550 plus \$200 per bbl

\*\* Figure applies to all spills greater than the 4<sup>th</sup> spill in the 12 months immediately preceding the spill in question.

## Prevention and Response Penalty Matrix

Violation Category	Cite	Description	Base Penalties
Failure to Notify	31TAC19.32(b)	Failure to notify the GLO of an unauthorized discharge	\$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
Failure to cooperate with SOSC	31TAC19.34(c)	Failure to comply with orders from SOSC and	\$1,000
	31TAC19.34(d)	failure to give written reasons for non-compliance	
	31 TAC 19.3(a)	Denying access to property	\$1,000
	31 19.32(f)	Failure to report material changes that occur prior to arrival of SOSC	\$1,000
Insufficient Response Actions	31TAC19.34(a)	Immediately initiate response actions	\$500
	40.251(d)	Take reasonable action to abate, contain, and remove pollution	\$1,000
	31TAC19.34(a)	Not consistent with plan or deviates from plan	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
	31TAC19.34(e) 31TAC19.34(f)	No site safety plan or not consistent with NCP or ACP	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time,

			size, and environmental impacts of the spill
	31TAC19.35(a)	Unauthorized DCO	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
	31TAC19.32(g) 31TAC19.32(h)	Failure to notify adjacent property owners or local responders	\$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
Waste Disposal	31TAC19.36(d)	Failure to inform SOSC about location for waste disposal	\$100
	31TAC19.36(c)	Failure to remove waste from spill site within 14 days after cleanup complete	\$100
	31TAC19.36(d)	Failure to provide documentation of waste disposal as directed	\$100
Paperwork	31TAC19.37(b)	Failure to file completion report	\$100 assuming that reasonable requests for extensions were granted
	40.251(e)	Making a material false statement with fraudulent intent in application or report	Criminal referral
	40.251(a) (2)	Operating a facility or vessel without required certificate of financial responsibility	Penalty to be determined based on a review of the circumstances and

			mitigating factors regarding the failure to comply with regulations
Operating	40.251(a)(1)	Operating a facility or vessel without an approved plan	\$1,000
Vessel	40.251(a)(5)	Removing a vessel from which a spill has emanated from jurisdiction without showing proof of financial responsibility	